**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

W.A.No.136 of 2005(D)
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AGAINST THE JUDGEMENT IN W.P.(C).30271/2004 DATED 14/10/2004
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APPELLANT: PETITIONER:-
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M.L. KUNJUMON,
SON OF LATE M.A. VAVACHAN, AGED 47 YEARS,
MUKKATH HOUSE, AROOR POST, ALAPPUZHA DISTRICT.

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENTS: RESPONDENTS:-
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1. THE COLLECTOR OF CUSTOMS,
   CUSTOM HOUSE, COCHIN.

2. CUSTOMS EXCISE AND GOLD CONTROL APPELLATE TRIBUNAL,
   CHENNAI.

3. ASSISTANT COMMISSIONER OF CUSTOMS
   CUSTOM PREVNTIVE DIVISION, 5TH FLOOR,
   CENTRAL EXCISE BHAVAN, KATHRIKKADAVU, KOCHI-17.

4. UNION OF INDIA, REPRESENTED BY
   SECRETARY, MINISTRY OF FINANCE
   CENTRAL GOVERNMENT SECRETARIAT, NEEW DELHI.

   BY ASSISTANT SOLICITOR GENERAL OF INDIA
   SRI.JOHN VARGHESE

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2006, THE COURT ON 06/12/2006 DELIVERED THE FOLLOWING:

**V.K.Bali,C.J. & S.Siri Jagan,J.**

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W.A.No.136 of 2005-D

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Dated, this the 6th day of December, 2006

**JUDGMENT**

**V.K.Bali,C.J.**

The challenge in the present Writ Appeal is to the order dated 14th October, 2004 passed by the learned Single Judge in W.P.(C).No.30271 of 2004-D. The petitioner was issued with show cause notice, Exhibit P3, under Section 124 of the Customs Act by the Collector of Central Excise and Customs, Kochi, followed by an adjudication order, Exhibit P4, dated 30.3.1994. He challenged both Exhibits P3 and P4 in the writ petition. Inasmuch as, show cause notice had merged into order Exhibit P4, the surviving challenge, as rightly observed by the learned Single Judge, was only to Exhibit P4. While dealing with and rejecting the challenge to Exhibit P4, learned Single Judge observed that the petitioner had invoked the appellate remedy by filing an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, Madras, wherein he sought exemption from making pre-deposit under the statute, but was asked to deposit an amount of Rs.1,00,000/-. This order passed by the Tribunal

was challenged by the petitioner in the Madras High Court, which was dismissed. The petitioner was, however, given more time to make the deposit. As the petitioner did not deposit the amount, the appeal was dismissed. All these orders were passed in 1994-1995. The petitioner waited for a period of nine years and then filed the present petition, wherein it was urged that the order passed by the adjudicating authority is violative of the principles of natural justice. The learned Single Judge further observed that an adjudicating order had been passed and when the petitioner had invoked the appellate remedy, he could not thereafter say that though he had invoked the appellate remedy, still he can file a writ petition against the order of the adjudicating authority and also that having challenged the order in the Madras High Court, the petitioner was estopped from filing yet another writ petition before this Court. There does not appear to be any illegality or impropriety in the order passed by the learned Single Judge.

2. Learned counsel representing the appellant, however, contends that there was no material at all before the adjudicating authority on the basis of which the order with regard to imprisonment or penalty could be passed. No materials were

placed on record to connect the appellant with the crime pertaining to smuggling activities. We do not find any merit in the contention of the learned counsel as noted above. The order passed by the adjudicating authority was amenable to appeal. An appeal was indeed filed, but not taken to its logical ends. It is not the case of the appellant that the order passed by the adjudicating authority was without jurisdiction. The question raised by the learned counsel is in the realm of facts and could better be adjudicated by the appellate authority. That apart, there is no plausible explanation as to why the appellant waited for nine years to challenge the order of the adjudicating authority, Exhibit P4. Surely, he was released from Jail in 1995, as stated by the counsel himself during the course of argument. There is, thus, unexplained delay in filing the present petition as well.

There is no merit in the writ appeal, which we hereby dismiss.

V.K.Bali
Chief Justice

S.Siri Jagan
Judge

vku/-